

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PROTECT DEMOCRACY PROJECT, INC.,
BRENNAN CENTER FOR JUSTICE AT
NEW YORK UNIVERSITY SCHOOL OF
LAW, MICHAEL F. CROWLEY, AND
BENJAMIN WITTES,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE, U.S.
DEPARTMENT OF HOMELAND
SECURITY, WILLIAM PELHAM BARR in
His Official Capacity as Attorney General of
the United States, and CHAD WOLF in His
Official Capacity as Acting Secretary of the
Department of Homeland Security,

Defendants.

Case No. 1:18-cv-10874-DPW

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO EXTEND TIME IN
WHICH TO FILE SUPPLEMENTAL BRIEF**

Plaintiffs respectfully oppose the government's motion to extend their time for filing the supplemental briefing ordered by the Court on December 4, 2019 (Dkt. 48). (*See* Dkt. 51.)

The government waited until 5:37 p.m. EST today—23 minutes before the filing deadline, *see* Local Rule 5.4(d)—to advise Plaintiffs that it intended to seek a two-day extension of the deadline and to seek Plaintiffs' assent to the same. (*See* Declaration of Shane A. Hunt in Support of Opposition to Defendants' Motion to Extend Time in Which to File Supplemental Brief ¶ 3 ("Hunt Decl.")). Counsel for Plaintiffs attempted to reach counsel for the government by telephone to clarify whether the motion proposed to extend the time for both parties' filings, but was directed to voicemail. (*See id.* ¶ 4.) Before counsel for Plaintiffs could respond by email, at 5:47 p.m. EST counsel for the government unilaterally filed a motion seeking an

extension of the government's deadline only. (*See* Dkt. 51; Hunt Decl. ¶ 5.)¹ The motion states that the government "was not able to confer [with Plaintiff's counsel]" prior to the filing of this motion "due to computer issues," but fails to explain why the government waited until the last minute to seek the extension. (Dkt. 51.) Plaintiffs duly filed their supplemental brief on time. (*See* Dkt. 52.)

Plaintiffs and the undersigned counsel believe in consenting to reasonable extension requests whenever possible, and Plaintiffs have previously agreed to the government's requests for reasonable extensions of time in this case. (*See* Dkts. 12, 44.) In this instance, however, the government inexplicably delayed seeking Plaintiffs' assent until the last minute, well after the government became aware it would be unable to meet the Court's deadline. The government offers no reason for its failure to seek relief or approach Plaintiffs earlier, and whatever that reason may be, the government's tardiness precluded Plaintiffs from seeking a mutual extension and has now frustrated the Court's intention that the parties exchange simultaneous briefing. (*See* Oral Argument Tr. 43:7-10 ("MS POSWISTILLO: Your Honor, would you like a response from the government? THE COURT: Not a response. A simultaneous offering about it.").) Plaintiffs therefore respectfully request that the Court either deny the government's motion or afford Plaintiffs, like the government, an opportunity to file a responsive brief.

¹ The government's motion variously seeks an additional two days (to December 13, 2019) and an additional eight days (to December 19, 2019). Plaintiffs assume the later date is requested in error.

Dated: December 11, 2019

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to any non-registered participants by first-class mail, postage prepaid, on December 11, 2019.

/s/ Meaghan VerGow
Meaghan VerGow